

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

v.

No. 98-6978

JIMMY LEE WILLIAMS,
Defendant-Appellant.

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

v.

No. 98-7369

JIMMY LEE WILLIAMS,
Defendant-Appellant.

Appeals from the United States District Court
for the Eastern District of North Carolina, at Raleigh.
Terrence W. Boyle, Chief District Judge.
(CR-93-72-BO, CA-96-14-4-BO)

Submitted: January 12, 1999

Decided: March 22, 1999

Before WIDENER, NIEMEYER, and MICHAEL, Circuit Judges.

No. 98-6978 vacated and remanded and No. 98-7369 dismissed by
unpublished per curiam opinion.

COUNSEL

Jimmy Lee Williams, Appellant Pro Se. Robert Edward Skiver, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

In No. 98-6978, Jimmy Lee Williams appeals from the district court's order granting summary judgment and denying relief on his 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998) motion. Prior to entry of summary judgment, the district court failed to provide Williams with notice and an opportunity to respond to the summary judgment motion. See Roseboro v. Garrison, 528 F.2d 309, 310 (4th Cir. 1975); see also United States Dev. Corp. v. Peoples Fed. Sav. & Loan Ass'n, 873 F.2d 731, 736 (4th Cir. 1989) (regardless of the merits, notice and opportunity to respond required prior to summary judgment). Therefore, as to No. 98-6978, we grant a certificate of appealability, vacate the judgment of the district court, and remand for issuance of Roseboro notice and further proceedings.

In No. 98-7369 Williams appeals the district court's order denying his "Motion to Proceed on Appeal." The district court construed this motion as one seeking a certificate of appealability and denied the motion. In the motion Williams was seeking either to have appeal No. 98-6978 deemed timely filed or leave to proceed in forma pauperis on appeal. However, because the appeal was deemed timely, Williams was granted leave to proceed in forma pauperis, and we have granted a certificate of appealability in No. 98-6978, we dismiss appeal No. 98-7369 as moot.

In conclusion, as to No. 98-6978, we grant a certificate of appealability, vacate the district court's order, and remand to the district court

for issuance of Roseboro notice and further proceedings. In No. 98-7369, we deny a certificate of appealability and dismiss the appeal as moot. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

No. 98-6978 - VACATED AND REMANDED

No. 98-7369 - DISMISSED